

# **EXHIBIT A**

E. SCOTT DOSEK #012114  
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*Attorneys for Plaintiff  
SOILWORKS, LLC, an Arizona corporation*

UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF ARIZONA

SOILWORKS, LLC, an Arizona corporation,

NO.: 2:06-CV-2141-DGC

Plaintiff / Counterdefendant /  
Counterclaimant,

**SOILWORKS, LLC'S RESPONSES TO  
MIDWEST INDUSTRIAL SUPPLY,  
INC.'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS  
AND THINGS**

MIDWEST INDUSTRIAL SUPPLY, INC.,  
an Ohio corporation authorized to do  
business in Arizona.

Defendant / Counterclaimant / Counterdefendant.

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure, Plaintiff, Soilworks, LLC (“Soilworks”) hereby responds to Defendant Midwest Industrial Supply, Inc.’s (“Midwest”) First Request for Production of Documents and Things, dated May 22, 2007.

## GENERAL STATEMENTS

1. Soilworks incorporates by reference each and every general objection set forth below into each and every specific response. From time to time a specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response shall not be interpreted as a waiver of any general

objection to that response,

2. Soilworks' responses to Defendant's Interrogatories and Document Requests are made to the best of Soilworks' present knowledge, information and belief. Soilworks reserves the right to supplement and amend these responses should future investigation indicate that such supplementation or amendment is necessary. The following responses and objections are given without prejudice to Soilworks' right to revise its responses based upon any subsequent investigation.

3. By responding to Midwest's Interrogatories and Document Requests, Soilworks does not waive any objection that may be applicable to: (a) the use, for any purpose, by Midwest of any information or documents given in this response to Midwest's Interrogatories and Document Requests; or (b) the admissibility, relevancy or materiality of any of the information or documents at issue in this case.

## GENERAL OBJECTIONS

1. Soilworks objects to the noticed date for the production. Due to the length and number of discovery requests and the volume of requested materials, Soilworks cannot possibly produce everything within 30 days. Soilworks will produce responsive materials on a rolling basis.

2. Soilworks objects to each and every Interrogatory and Document Request to the extent that it is inconsistent or seeks to impose duties or obligations on Soilworks beyond those imposed by the Federal Rules of Civil Procedure, the Local Rules for this District, or the Individual Rules of the Judge hearing this matter.

3. Soilworks objects to each and every Interrogatory and Document Request insofar it is vague, ambiguous, indefinite, overly broad, unduly burdensome, duplicative, cumulative, unintelligible or otherwise unclear as to the precise information sought. Soilworks objects on this basis particularly when the Interrogatory or Document Request is unduly burdensome in view of the cost necessary to investigate weighed against Midwest's need for the information.

4. Soilworks objects to each and every Interrogatory and Document Request to

1 the extent that it seeks information that is neither relevant to any claim or defense in this  
2 action nor reasonably calculated to lead to the discovery of admissible evidence.

3 5. Soilworks objects to each and every Interrogatory and Document Request as  
4 overly broad and unduly burdensome to the extent that it seeks information about Soilworks  
5 products that are not accused of infringement. Soilworks will only provide materials and  
6 information on its products and services that are actually accused of infringing the two  
7 Midwest Patents identified in the Counterclaims.

8 6. Soilworks objects to each and every Interrogatory and Document Request as  
9 overbroad in geographic scope to the extent that it seeks discovery on activities outside the  
10 United States. Unless otherwise stated, Soilworks will interpret each Interrogatory and  
11 Document Request to be limited to activities in the United States.

12 7. Soilworks objects to each and every Interrogatory and Document Request to  
13 the extent that it seeks information or documents protected by the attorney-client privilege,  
14 work product doctrine, joint-defense privilege, common-interest privilege, or any other  
15 applicable law, privilege, protection, or doctrine (collectively "privileged information"). The  
16 production of any privileged information or document by Soilworks (beyond production of  
17 opinions relied upon) is unintentional, and Soilworks does not intend to waive any applicable  
18 objection or privilege as a result of such production. The scope of any waiver of privilege  
19 related to production of opinions of counsel shall be as narrow as permitted by law.

20 8. Soilworks objects to each and every Interrogatory and Document Request to  
21 the extent it requires Soilworks to search for and reveal privileged information from its and  
22 its attorneys' litigation files pertaining to this lawsuit. Soilworks will not schedule on its  
23 privilege log any attorney-client privileged materials or materials protected by the attorney  
24 work product doctrine created during the course of any ongoing Soilworks/Midwest  
25 litigation.

26 9. Soilworks objects to each and every Interrogatory and Document Request as  
27 unduly burdensome and oppressive to the extent that it purports to require Soilworks to  
28 search its facilities and inquire of Soilworks' employees other than those facilities and

1 employees that would reasonably be expected to have responsive information. Soilworks'  
2 responses are based upon (1) a reasonable search, given the time allotted to Soilworks to  
3 respond to the interrogatories, of facilities and files that could reasonably be expected to  
4 contain responsive information, and (2) inquiries of Soilworks employees and/or  
5 representatives who could reasonably be expected to possess responsive information.

6 10. Soilworks objects to each and every Interrogatory and Document Request to  
7 the extent that it seeks information or documents already in the possession of Midwest or in  
8 the public domain and as readily available to Midwest as they are to Soilworks.  
9 Accordingly, information or documents that are otherwise responsive to these Interrogatories  
10 and Document Requests, but that are already in the possession of Midwest, or are equally  
11 available or more available to Midwest, will not be produced in response to these  
12 Interrogatories and Document Requests.

13 11. Soilworks objects to each and every Interrogatory and Document Request to  
14 the extent it calls for information or documents not within the possession, custody or control  
15 of Soilworks. The responses given herein are based upon information and documents within  
16 Soilworks' possession, custody or control.

17 12. Soilworks objects to each and every Interrogatory and Document Request as  
18 overbroad and unduly burdensome to the extent that it is unlimited in temporal scope or  
19 otherwise not limited to a time frame relevant to this litigation and the patent-in-suit.

20 13. Soilworks objects to each and every Interrogatory and Document Request to  
21 the extent that it calls for information or documents which are confidential or proprietary to,  
22 or the trade secrets of, a third party. Soilworks will not produce such documents until it has  
23 notified the relevant third parties of Midwest's requests and, to the extent necessary,  
24 obtained their consent to such production.

25 14. Soilworks objects to each and every Interrogatory and Document Request to  
26 the extent it seeks confidential, trade secret, or proprietary business, technical, marketing, or  
27 financial information. Soilworks will not provide such information until a suitable protective  
28 order has been agreed upon by the parties and entered by the Court.

15. Soilworks objects to each and every Interrogatory and Document Request to the extent that it seeks information or documents regarding Soilworks' proprietary development activities for products not yet manufactured or available to the public, because the relevance, if any, of such highly confidential information is substantially outweighed by the prejudice that Soilworks would suffer if the information were disclosed or made available to Soilworks' competitors.

16. Soilworks objects to each and every Interrogatory and Document Request to the extent that it seeks discovery that is the province of expert testimony, prior to the period that expert disclosures and discovery are scheduled to occur.

17. Soilworks objects that the Interrogatories and Document Requests are premature. This case is still in its early stages. Soilworks is still investigating its claims, and needs critical discovery from Midwest. Midwest has yet to identify its claim construction position, or state in detail the basis for its infringement contentions.

18. The information set forth herein is provided without waiving (1) the right to object to the use of such information for any purpose, if a basis for objecting exists; (2) the right to object to any request involving or relating to the subject matter of information contained in this disclosure statement; or (3) the right to revise, correct, supplement or clarify any of the information set forth below.

## OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

1. Soilworks objects to the definitions of Midwest as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The terms are defined so broadly as to render many of the Interrogatories and Document Requests incomprehensible.

2. Soilworks objects to the definitions of "document" and "documents" as overbroad, vague, and ambiguous. Soilworks will construe both terms consistently with the Federal and Local Rules,

3. Soilworks objects to Midwest's instructions as overly broad. Except as set forth below, Soilworks will not separately, specifically identify the document,

1       27. All documents, things, and electronically stored information concerning any  
2 and all factual bases for each and every claim set forth in Plaintiff's Complaint and/or  
3 Counterclaim(s).

4       **RESPONSE: Objection.** This request is vague, overly intrusive, broad, unduly  
5 burdensome and not reasonably calculated to lead to the discovery of admissible  
6 evidence. This interrogatory is premature. This case is still in its early stages, and until  
7 Midwest identifies its claim construction / interpretation position and provides a claims  
8 chart regarding its patent(s), Soilworks cannot fully respond to this request. Without  
9 waiving the foregoing objections, once the Court has entered a Protective Order which  
10 is mutually agreeable to all parties, Soilworks will make responsive documents  
11 available. Further, this request seeks documents which may be subject to the attorney  
12 client and/or work product privileges. To the extent privileged documents exist,  
13 Soilworks will provide a privilege log.

14       28. All documentary, physical, and electronically stored evidence that Plaintiff  
15 may or intends to rely upon in any pleading, at trial, and/or any hearing in this action.

16       **RESPONSE: Objection.** Vague, overbroad and not reasonably calculated to the  
17 discovery of admissible evidence. This interrogatory is premature. This case is still in  
18 its early stages, and until Midwest identifies its claim construction / interpretation  
19 position and provides a claims chart regarding its patent(s), Soilworks cannot fully  
20 respond to this request. Without waiving the foregoing objections, once the Court has  
21 entered a Protective Order which is mutually agreeable to all parties, Soilworks will  
22 make responsive documents available. Further, this request seeks documents which  
23 may be subject to the attorney client and/or work product privileges. To the extent  
24 privileged documents exist, Soilworks will provide a privilege log.

25       29. Produce actual samples of Plaintiff's Products.

26       **RESPONSE: Objection.** Vague and overbroad. Durasoil® is the only  
27 Soilwork's product about which an infringement argument has been made, and  
28 Soilworks will only provide the requested information about Durasoil®. Without

1       waiving the foregoing objections, once the Court has entered a Protective Order which  
2       is mutually agreeable to all parties, Soilworks will make responsive documents  
3       available.

4       30. All documents, things, and electronically stored information, including  
5       invoices, between Plaintiff and any internet entity Plaintiff uses to advertise Plaintiff's  
6       Products, including, but not limited to Google and Yahoo!

7       **RESPONSE: Objection. Vague, overbroad and not reasonably calculated to the**  
8       **discovery of admissible evidence.**

9       31. All documents, things, and electronically stored information regarding  
10       impressions, purchasing of keywords, Keywords and "costs per click" from all search  
11       engines Plaintiff advertises upon related to Plaintiff's Products.

12       **RESPONSE: Objection. Vague, overbroad and not reasonably calculated to the**  
13       **discovery of admissible evidence.**

14       32. Produce a representative sampling of the history of Plaintiff's websites  
15       advertising Plaintiff's Products.

16       **RESPONSE: Objection. Vague, overbroad and not reasonably calculated to the**  
17       **discovery of admissible evidence.**

18       33. All organizational charts of Plaintiff from 2002 to the present time.

19       **RESPONSE: Objection. Vague, overbroad and not reasonably calculated to the**  
20       **discovery of admissible evidence. Without waiving the foregoing objections, Soilworks**  
21       **responds that it does not possess the requested documents.**

22       Dated this 23rd day of July, 2007.

1  
2 KUTAK ROCK LLP  
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4

5 By /s/  
6

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7 *Attorneys for Plaintiff*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 23rd, 2007, the foregoing Soilworks, LLC's Responses to Midwest Industrial Supply, Inc.'s First Request for Production of Documents and Things was served electronically upon the following:

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*Attorneys for Defendant Midwest Industrial Supply, Inc.*

/s/  
Amy S. Fletcher

## **EXHIBIT B**

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3 KUTAK ROCK LLP  
4 Suite 300  
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8 Facsimile: (480) 429-5001

9 *Attorneys for Plaintiff  
10 Soilworks, LLC, an Arizona corporation,*

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UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF ARIZONA

SOILWORKS, LLC, an Arizona  
corporation.,

NO.: 2:06-CV-02141-DGC

Plaintiff / Counterdefendant,  
v.  
MIDWEST INDUSTRIAL SUPPLY, INC.,  
an Ohio corporation authorized to do  
business in Arizona.,

SOILWORKS, LLC'S RESPONSE TO  
MIDWEST INDUSTRIAL SUPPLY,  
INC.'S FIRST SET OF REQUEST FOR  
ADMISSIONS TO SOILWORKS, LLC

Defendant / Counterclaimant.

To Defendant/Counterclaimant:

**RESPONSE TO FIRST SET OF REQUEST FOR ADMISSIONS**

**REQUEST FOR ADMISSION NO. 1:** Admit that Plaintiff is not a manufacturer of  
any of Plaintiff's products.

Admit \_\_\_\_\_ Deny X

**REQUEST FOR ADMISSION NO. 2:** Admit that Plaintiff has never manufactured  
Plaintiff's Soiltac® and/or Durasoil® products.

Admit \_\_\_\_\_ Deny X

1                   **REQUEST FOR ADMISSION NO. 3:** Admit that Plaintiff's Durasoil® product has  
2 a binder.

3                   Admit \_\_\_\_\_                   Deny   X  

5                   **REQUEST FOR ADMISSION NO. 4:** Admit that Plaintiff's Durasoil® product has  
6 a synthetic isoalkane.

7                   Admit \_\_\_\_\_                   Deny   X  

9                   **REQUEST FOR ADMISSION NO. 5:** Admit that Plaintiff's Durasoil® product's  
10 isoalkane has a viscosity of at least about 19 centistokes @20°C., and a flame point greater  
11 than 130°C.

12                   Admit \_\_\_\_\_                   Deny   X  

14                   **REQUEST FOR ADMISSION NO. 6:** Admit that Plaintiff's Durasoil® product's  
15 synthetic isoalkane has a flash point of 177°C.

16                   Admit \_\_\_\_\_                   Deny   X  

18                   **REQUEST FOR ADMISSION NO. 7:** Admit that Plaintiff's Durasoil® product is  
19 not an organic product.

20                   Admit \_\_\_\_\_                   Deny   X  

22                   **REQUEST FOR ADMISSION NO. 8:** Admit that Plaintiff's Durasoil® product is  
23 not a synthetic product.

24                   Admit \_\_\_\_\_                   Deny   X  

26                   ///

27                   ///

28                   ///

1                   **REQUEST FOR ADMISSION NO. 9:** Admit that Plaintiff has not suffered any  
2 irreparable harm.

3                   Admit \_\_\_\_\_                   Deny   X  

5                   **REQUEST FOR ADMISSION NO. 10:** Admit that Defendant has not disseminated  
6 information and/or documentary materials in a manner that is likely to cause confusion  
7 among consumers of Plaintiff's products regarding Plaintiff's conduct and products.

8                   Admit \_\_\_\_\_                   Deny   X  

10                  **REQUEST FOR ADMISSION NO. 11:** Admit that Defendant has not disseminated  
11 information and/or documentary materials in a manner that is likely to cause deception  
12 among consumers of Plaintiff's products regarding Plaintiff's conduct and products.

13                  Admit \_\_\_\_\_                   Deny   X  

15                  **REQUEST FOR ADMISSION NO. 12:** Admit that Defendant has not disseminated  
16 information and/or documentary materials in a manner that is likely to cause mistake among  
17 consumers of Plaintiff's products regarding Plaintiff's conduct and products.

18                  Admit \_\_\_\_\_                   Deny   X  

20                  **REQUEST FOR ADMISSION NO. 13:** Admit that Plaintiff has no evidence that  
21 Midwest's Patents are invalid under 35 U.S.C. § 101.

22                  Admit \_\_\_\_\_                   Deny   X  

24                  **REQUEST FOR ADMISSION NO. 14:** Admit that Plaintiff has no evidence that  
25 Midwest's Patents are invalid under 35 U.S.C. § 102.

26                  Admit \_\_\_\_\_                   Deny   X  

27                  ///

28                  ///

1                   **REQUEST FOR ADMISSION NO. 15:** Admit that Plaintiff has no evidence that  
2 Midwest's Patents are invalid under 35 U.S.C. § 112.

3                   Admit \_\_\_\_\_                   Deny X

5                   **REQUEST FOR ADMISSION NO. 16:** Admit that Plaintiff has not been damaged  
6 monetarily by any action of Defendant as set forth in Plaintiff's Complaint.

7                   Admit \_\_\_\_\_                   Deny X

9                   **REQUEST FOR ADMISSION NO. 17:** Admit that Plaintiff has not been damaged  
10 monetarily by any action of Defendant with respect to Defendant's actions which serve as  
11 the basis for COUNT V of Plaintiff's Complaint.

12                   Admit \_\_\_\_\_                   Deny X

14                   **REQUEST FOR ADMISSION NO. 18:** Admit that Plaintiff has no written legal  
15 opinion, which predates the filing of Plaintiff's Complaint, regarding noninfringement of  
16 either of the Midwest Patents.

17                   Admit X                   Deny \_\_\_\_\_

19                   **REQUEST FOR ADMISSION NO. 19:** Admit that Plaintiff has no written legal  
20 opinion, which predates the filing of Plaintiff's Complaint, regarding invalidity of either of  
21 the Midwest Patents.

22                   Admit X                   Deny \_\_\_\_\_

24                   **REQUEST FOR ADMISSION NO. 20:** Admit that there are no "proprietary  
25 ingredients" in Plaintiff's Durasoil® product.

26                   Admit \_\_\_\_\_                   Deny X

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Dated this 31<sup>st</sup> day of December, 2007.

KUTAK ROCK LLP

By /s

E. Scott Dosek  
John P. Passarelli  
Suite 300  
8601 North Scottsdale Road  
Scottsdale, AZ 85253-2742

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 31, 2007, the foregoing Soilworks, LLC's Response to Midwest Industrial Supply, Inc.'s First Set of Request for Admissions was served electronically upon the following:

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*Attorneys for Defendant Midwest Industrial Supply, Inc.*

/s/  
Amy S. Fletcher

## **EXHIBIT C**

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*Attorneys for Plaintiff  
Soilworks, LLC, an Arizona corporation,*

UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF ARIZONA

SOILWORKS, LLC, an Arizona corporation.,

NO.: 2:06-CV-02141-DGC

Plaintiff / Counterdefendant,

**SOILWORKS, LLC'S RESPONSE TO  
MIDWEST INDUSTRIAL SUPPLY,  
INC.'S SECOND SET OF  
INTERROGATORIES TO  
SOILWORKS, LLC**

MIDWEST INDUSTRIAL SUPPLY, INC.,  
an Ohio corporation authorized to do  
business in Arizona..

Defendant / Counterclaimant:

To Defendant/Counterclaimant:

## RESPONSE TO SECOND SET OF INTERROGATORIES

**INTERROGATORY NO. 21:** If you denied any of Defendant's requests for admissions as set forth in Defendant Midwest Industrial Supply, Inc.'s First Set of Requests for Admissions to Plaintiff Soilworks, LLC, please set forth each and every reason for such denial(s).

### **RESPONSE:**

1. Request for Admission No. 1 is denied because the term "manufacture" is nowhere defined in Defendant's discovery requests. Nevertheless, by any commonly used definition of the term manufacturer, Plaintiff is a manufacturer.

1 of products.

2 2. Request for Admission No. 2 is denied because the term "manufacture" is  
3 nowhere defined in Defendant's discovery requests. Nevertheless, by any  
4 commonly used definition of the term manufacturer, Plaintiff is a manufacturer  
5 of products.

6 3. Request for Admission No. 3 is denied because the term "binder" is nowhere  
7 defined in Defendant's discovery requests.

8 4. Request for Admission No. 4 is denied because the term "synthetic isoalkane"  
9 is nowhere defined in Defendant's discovery request.

10 5. Request for Admission No. 5 is denied because the term "isoalkane" is  
11 nowhere defined in Defendant's discovery request.

12 6. Request for Admission No. 6 is denied because the term "isoalkane" is  
13 nowhere defined in Defendant's discovery request.

14 7. Request for Admission No. 7 is denied because Durasoil® is an organic  
15 product.

16 8. Request for Admission No. 8 is denied because Durasoil® is a synthetic  
17 product.

18 9. Request for Admission No. 9 is denied because Plaintiff has indeed suffered  
19 irreparable harm due to the actions of defendant in publishing untrue  
20 accusations about Plaintiff within the parties' industry, in general and  
21 specifically to Plaintiff's customers..

22 10. Request for Admission No. 10 is denied because Defendant has disseminated  
23 information in a manner that is likely to cause confusion among customers of  
24 Plaintiff's products regarding Plaintiff's conduct and products.

25 11. Request for Admission No. 11 is denied because Defendant has disseminated  
26 information in a manner that is likely to cause deception among consumers of  
27 Plaintiff's products regarding Plaintiff's conduct and products.

28 12. Request for Admission No. 12 is denied because Defendant has disseminated

1 information in a manner that is likely to cause mistake among consumers of  
2 Plaintiff's products regarding Plaintiff's conduct and products.

3 13. Request for Admission No. 13 is denied because Defendant's own documents  
4 including its claim charts reveal that its patents are invalid under 35 U.S.C.  
5 §101.

6 14. Request for Admission No. 14 is denied because Defendant's own documents  
7 including its claim charts reveal that its patents are invalid under 35 U.S.C.  
8 §101.

9 15. Request for Admission No. 15 is denied because Defendant's own documents  
10 including its claim charts reveal that its patents are invalid under 35 U.S.C.  
11 §101.

12 16. Request for Admission No. 16 is denied because Plaintiff has most certainly  
13 suffered monetary damage as a result of the actions taken by Defendant and as  
14 set forth in Plaintiff's complaint. The precise amount of said damages has yet  
15 to be calculated with precision and continues to mount.

16 17. Request for Admission No. 17 is denied because Plaintiff has most certainly  
17 suffered monetary damage as a result of the actions taken by Defendant and as  
18 set forth in Plaintiff's complaint. The precise amount of said damages has yet  
19 to be calculated with precision and continues to mount.

20 18. Request for Admission No. 20 is denied because there are indeed "proprietary  
21 ingredients" in Durasoil®.

22  
23 Dated this 31<sup>st</sup> day of December, 2007.  
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KUTAK ROCK LLP

By /s

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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 31, 2007, the foregoing Soilworks, LLC's Response to Midwest Industrial Supply, Inc.'s Second Set of Interrogatories was served electronically upon the following:

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*Attorneys for Defendant Midwest Industrial Supply, Inc.*

/s/  
Amy S. Fletcher

## **EXHIBIT D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

SOILWORKS, LLC, an Arizona )  
corporation, )  
Plaintiff/Counterdefendant, )  
vs. ) NO. 2:06-CV-02141-DGC  
MIDWEST INDUSTRIAL SUPPLY, )  
INC., an Ohio corporation )  
authorized to do business )  
in Arizona, )  
Defendant/Counterclaimant. )

---

Phoenix, Arizona  
April 9, 2008  
9:00 a.m.

C O N F I D E N T I A L  
DEPOSITION OF CHAD FALKENBERG  
SOILWORKS, LLC 30(b)(6)  
(VOLUME I, Pages 1 - 229)

LEA, SHERMAN & HABESKI  
Registered Professional Reporters  
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Phone: 602.257.8514 - Fax: 602.257.8582  
Reported by: Linda Blackmon, RPR/RMR  
Certified Reporter  
Certificate No. 50320

## 1                   I N D E X

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4	EXAMINATION	PAGE
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15	17	Letter dated 7-27-06 to Donald Dunavant from Robert Vitale .....	129
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1 identify the instance you are saying they missed  
2 because of this letter?

3 A. Not the firm details you are looking for, no.

4 Q. I am looking for any detail. By the way, all  
5 you have told me is that there may be an airport but  
6 you don't know of any, correct?

7 A. I think you would be best off when you depose  
8 Polar that they would have the closest information  
9 relating to those projects.

10 Q. Do you know what irreparable harm has been  
11 caused by Midwest against Soilworks?

12 MR. DOSEK: Object to the form.

13 A. I don't know.

14 Q. BY MR. SKERIOTIS: Do you know what  
15 "irreparable harm" is?

16 A. I have an idea.

17 Q. I will represent to you that when I use that  
18 term I mean harm that can't be repaired monetarily. So  
19 with that definition what irreparable harm is Midwest  
20 causing to Soilworks?

21 MR. DOSEK: Same objection.

22 A. I don't know.

23 Q. BY MR. SKERIOTIS: With respect to  
24 Paragraph 12, Paragraph 12 states "Midwest  
25 intentionally has misrepresented the scope of said

1 Q. BY MR. SKERIOTIS: Do you know the damage, can  
2 you estimate the damage that you feel that Midwest has  
3 caused Soilworks?

4 A. I wish it was that easy. It's very difficult.

5 Q. Do you know of any damages you have suffered  
6 that you can quantify?

7 A. That's the problem, it's very difficult to  
8 quantify and it's a challenge to quantify that number.

9 Q. But do you know of anything that you can  
10 quantify?

11 A. I don't know for sure.

12 Q. So I guess again the question is as you sit  
13 here today do you know of any damage that you can  
14 quantify as you sit here today?

15 MR. DOSEK: Object to the form.

16 A. It's difficult to quantify.

17 Q. BY MR. SKERIOTIS: I understand it's difficult  
18 to quantify. The question is, though, do you know of  
19 any damage as you sit here today that you can quantify?

20 A. I am not sure.

21 Q. But I don't think that's an "I'm not sure"  
22 question, I think it's either "yes" or "no", either you  
23 can quantify something here today or you can't. I  
24 understand it's difficult. Just so you know, I am not  
25 asking you for what's difficult to quantify, I am

1 asking you for what you can quantify.

2 A. I have not come here with numbers in my head,  
3 no.

4 Q. So as you sit here today you cannot quantify  
5 any amount of damage, correct?

6 A. As I sit here today I do not know how much  
7 damage has been caused.

8 Q. Well, Mr. Falkenberg, how do you expect  
9 Midwest to proceed with its litigation when at some  
10 point in time you quantify some amount? I mean when do  
11 you plan on quantifying that amount, can I ask you  
12 that?

13 I mean here we are getting ready to be  
14 done with discovery, this is our only deposition that's  
15 going to happen today and tomorrow, when do you expect  
16 to quantify this? Do you expect to just spring it on  
17 Midwest at some point in the future later and we go  
18 where did that come from?

19 MR. DOSEK: Object to the form. If you  
20 have a question, ask the question.

21 Q. BY MR. SKERIOTIS: When do you expect to  
22 quantify these numbers? This litigation has been  
23 pending that you filed on September 7, 2006. We are  
24 almost at the two-year mark and you haven't been able  
25 to quantify what amount of damage; is that correct?

1 A. That's because it's difficult to quantify.

2 Q. When do you plan on quantifying it? That's  
3 what my question is, when do you plan on quantifying  
4 the damage?

5 A. I wish I could give you a date.

6 Q. So it could be that you can never quantify  
7 this damage, correct?

8 A. I don't know when I am going to give you a  
9 date, I don't know what that date is going to be.

10 MR. DOSEK: Let's break for lunch.

11 MR. SKERIOTIS: Hang on.

12 MR. DOSEK: It's 12:30 now, we have had  
13 one little break and I think now is a good time.

14 MR. SKERIOTIS: Well, with all due  
15 respect, Scott, I mean I always have given you leniency  
16 and I understand, but this is my deposition.

17 MR. DOSEK: I understand that too and I  
18 understand that --

19 MR. SKERIOTIS: I have got one more  
20 count I want to get to and then we will take a break.  
21 I want to finish this Complaint up to the degree that I  
22 can.

23 MR. DOSEK: If it wasn't for the fact  
24 that you are spending such an inordinate amount of time  
25 going through this Complaint, I would agree with you

1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA ) ss.

3

4 BE IT KNOWN that the foregoing deposition was  
5 taken before me, LINDA BLACKMON, a Certified Reporter  
6 in the State of Arizona; that the witness before  
7 testifying was duly sworn by me to testify to the whole  
8 truth; that the questions propounded to the witness and  
9 the answers of the witness thereto were taken down by  
10 me in shorthand and thereafter reduced by  
11 computer-aided transcription to print under my  
12 direction; that the deposition was submitted to the  
13 witness to read and sign; that the foregoing 228 pages  
14 are a true and correct transcript of all proceedings  
15 had upon taking of said deposition, all done to the  
16 best of my skill and ability.

17 I FURTHER CERTIFY that I am in no way related  
18 to any of the parties thereto nor am I in any way  
19 interested in the outcome hereof.

20 DATED at Phoenix, Arizona, this 15th day of  
21 April, 2008.

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23

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25

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Linda Blackmon, RPR/RMR  
Certified Reporter  
Certificate No. 50320